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U.S. SUPREME COURT, U. S.

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**Supreme Court of the
United States**

OCTOBER TERM, 1946.

No. 689

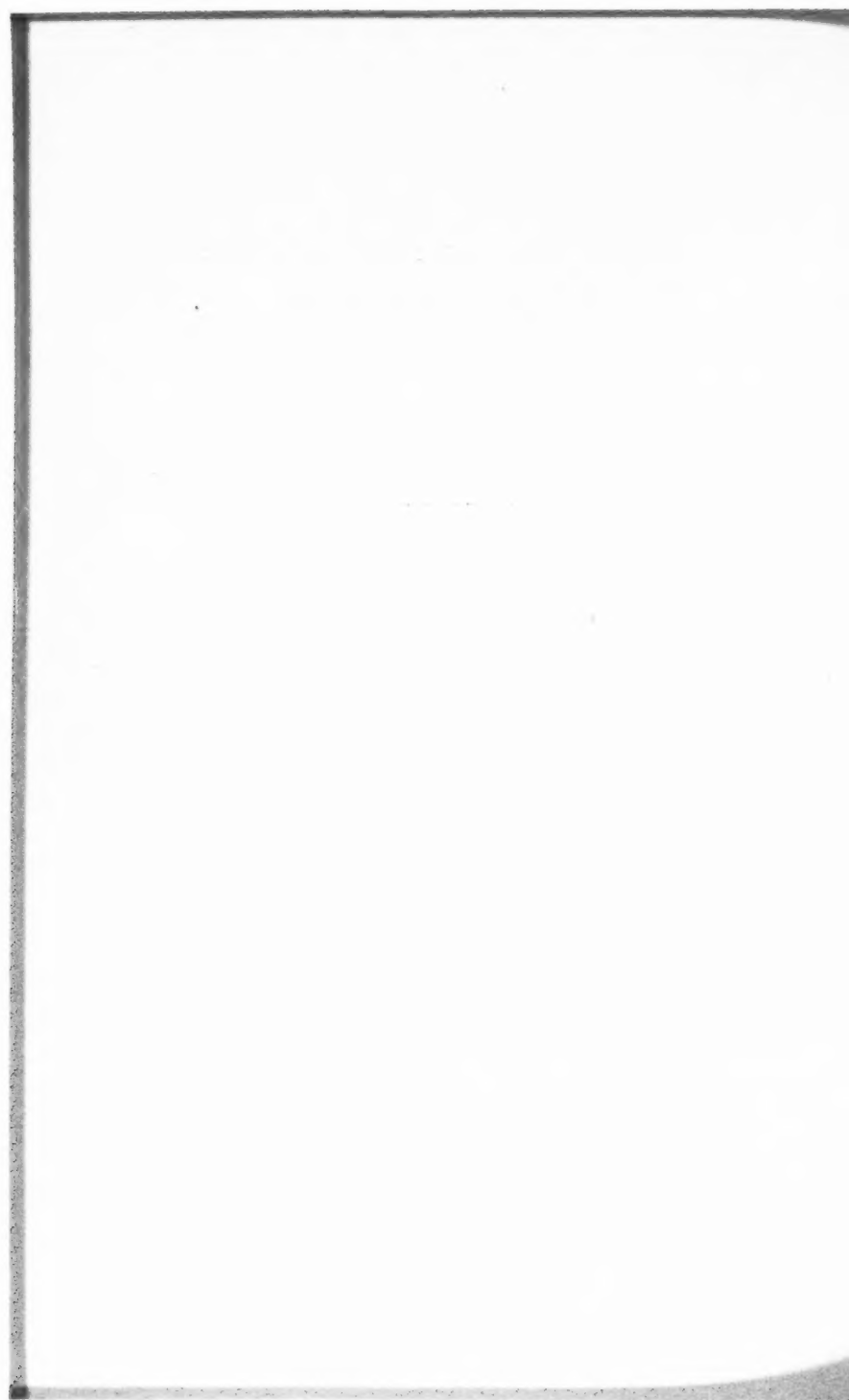
FREEMAN J. THOMSON, ADMINISTRATOR OF
THE ESTATE OF ARTHUR W. THOMSON,
DECEASED, PETITIONER,

VS.

CAROLINE THOMSON, RESPONDENT.

**MOTION FOR ORDER DIRECTING STAY OF
MANDATE.**

HARVEY E. HARTZ,
MARTIN J. O'DONNELL,
Attorneys for Petitioner.



Supreme Court of the United States

OCTOBER TERM, 1946.

No.

FREEMAN J. THOMSON, ADMINISTRATOR OF
THE ESTATE OF ARTHUR W. THOMSON,
DECEASED, PETITIONER,

VS.

CAROLINE THOMSON, RESPONDENT.

MOTION FOR ORDER DIRECTING STAY OF MANDATE.

To the Honorable Associate Justice Wiley Rutledge,
Assigned to the Eighth Circuit, or to Any Other Jus-
tice of the Court:

Your Petitioner Respectfully States:

On September 3, 1946, the United States Circuit Court
of Appeals for the Eighth Circuit in the case of

Caroline Thomson,

Appellant,

v.

No. 13330.

Freeman J. Thomson,

Administrator of the

Estate of Arthur W.

Thomson,

Appellee,

overruled a petition for rehearing.

That the judgment rendered by the United States Circuit Court of Appeals was a judgment reversing a judgment of the District Court in an interpleader suit, in which said District Court found the issues for petitioner and awarded him the sum of \$14,951.50.

That, under the law of Missouri, it is the duty of petitioner as administrator to prosecute all suits on behalf of the estate, and that in the performance of said duty said petitioner files this motion.

On September 10, 1946, petitioner filed a motion in said Circuit Court of Appeals praying order to stay mandate, which motion is as follows, caption omitted:

"Now comes appellee, Freeman J. Thomson, Administrator of the Estate of Arthur W. Thomson, deceased, and respectfully states that it is his intent to attempt to have the record in the above entitled cause reviewed on certiorari by the Supreme Court of the United States.

That, to enable him so to do, it is necessary that an order staying the mandate in this case be made and entered of record.

Wherefore, appellee prays that this Court order that the mandate in the above entitled cause be stayed for the period authorized by the Acts of Congress in such case made and provided, so that appellee may

have an opportunity to prepare and file a petition for certiorari in the Supreme Court of the United States.

Harvey E. Hartz,
Attorney for Appellee."

Said motion was sustained and the mandate ordered stayed until October 24, 1946.

That thereafter, and on or about October 14, 1946, petitioner mailed to the Clerk of the United States Circuit Court of Appeals the following motion in said cause, praying an order to extend the stay of mandate, which motion, caption omitted, is as follows:

"Now comes appellee and respectfully states that additional counsel has been consulted in connection with appellee's attempt to have the record in the above entitled cause reviewed by certiorari by the Supreme Court of the United States and that the petition and supporting brief are not yet prepared.

Wherefore, Appellee prays that the Court order that the mandate in the above entitled cause be further stayed for the period authorized by the Acts of Congress in such case made and provided, so that appellee may have an opportunity to avail himself of the services of said additional counsel to prepare and file a petition for certiorari and supporting brief in the Supreme Court of the United States."

Harvey E. Hartz,
Attorney for Appellee."

That accompanying said motion was a letter signed by Harvey E. Hartz to the Clerk of the said Circuit Court of Appeals, which letter is in words and figures as follows:

"October 14, 1946.

"E. E. Koch, Clerk,
United States Circuit Court of Appeals,
St. Louis, Missouri.

Dear Mr. Koch:

In Re: Caroline Thomson v. Freeman
J. Thomson, Administrator,
No. 13,330.

I have asked Martin J. O'Donnell, Esq. to aid me in the preparation of the petition for certiorari and supporting brief in the above entitled cause. His other engagements have been such that he has been unable to give me the necessary assistance in time to have the petition for certiorari and supporting brief filed in the Supreme Court of the United States within the time in which the mandate has been heretofore stayed.

Hence, I am sending you the enclosed motion, and respectfully request that you have same allowed, allowing 30 days additional time.

Very truly yours,

Harvey E. Hartz."

On October 22, 1946, the following order was made in said cause, caption omitted:

"Motion has been filed by appellee in this cause for a further stay of the issuance of the mandate for the period authorized by law in which to file a petition for writ of certiorari in the Supreme Court of the United States. Opposition has been filed by appellant.

The motion and opposition have been considered and it appears from the files in this cause that the petition and supplemental petition for a rehearing filed by appellee were denied on September 3, 1946, and on motion of appellee filed September 10, 1946, the issuance of the mandate of this Court was by order entered September 23, 1946, stayed for a period

of thirty days from and after said date, and that appellee had taken no steps to obtain necessary transcript of record from this Court for filing in the Supreme Court with a petition for writ of certiorari until October 19, 1946.

Therefore, It Is Ordered that said motion for further stay be, and is hereby, denied.

October 22, 1946.

Approved for the Court:

Kimbrough Stone,
Presiding Judge."

That thereafter, and on October 23, 1946, the senior Circuit Judge of the United States Circuit Court of Appeals transmitted the following letter to said clerk and to counsel for the parties:

"Kansas City, Mo., Oct. 23, 1946.

No. 13,330, Caroline Thomson, Appellant, v. Freeman
J. Thomson, Administrator of the
Estate of Arthur W. Thomson,
Appellee.

E. E. Koch, Esq.
Clerk, U. S. Circuit Court of Appeals
St. Louis, Missouri

Dear Mr. Koch:

In the above case you were yesterday sent order denying further stay of mandate. It is my understanding from counsel this morning that they wish to apply to a Justice of the Supreme Court for further stay. To afford them such opportunity, I wish you would hold the mandate for two weeks until Thursday, November 7, 1946.

Sincerely yours,

Kimbrough Stone."

cc: Messrs. White & Hall,
Counsel for Appellant;
Mr. Harvey E. Hartz,
Counsel for Appellee."

That on October 24, 1946, the clerk of said court sent a letter to petitioner's counsel, which is in words and figures as follows:

"13330, Thomson v. Thomson, Admr. etc.

"St. Louis, Mo. 1

October 24, 1946.

"Harvey E. Hartz, Esq.,
304 Title & Trust Bldg.,
Kansas City, Missouri.

Dear Sir:

I am in receipt of your letter of the 23rd instant enclosing entry of appearance of Mr. Martin J. O'Donnell as counsel for appellee in the above case, which I have filed and entered, and this will be included in the transcript to be prepared for filing in the Supreme Court.

As requested I will also include in the transcript following the recent order of this Court denying motion for further stay of mandate paragraph (c) of our Rule 16.

When the transcript has been completed and the additional proceedings in this Court printed I will, as requested, send the certified transcript with ten completed copies of the record direct to the Clerk of the Supreme Court at Washington and will send you a complete copy for service on counsel for appellant with your petition for writ of certiorari and supporting brief. Will also send you several copies of the additional proceedings in this Court.

I also have a letter from Judge Stone this morning directing that mandate be held for two weeks until Thursday, November 7, 1946. This direction will be complied with.

Yours truly,

E. E. Koch, Clerk."

K/A

Petitioner states that none of the completed copies of the record have been received by your petitioner or his counsel, and that for said reason it has been impossible to prepare the petition for certiorari and supporting brief, together with the facts set forth in the letter to the clerk of October 14, 1946, prior to November 7, 1946.

Your petitioner states that he has been advised by counsel that in the record and judgment of the United States Circuit Court of Appeals there is an error which should be reviewed and corrected by the Supreme Court of the United States on certiorari, and that in order to enable petitioner to have a petition for certiorari and supporting brief prepared, it is necessary that he be given the three months fixed by the Act of Congress in such case made and provided for the preparation and presentation of said petition for certiorari and supporting brief to the Supreme Court of the United States.

And your petitioner further states that in the said interpleader proceeding the sum involved, to-wit: \$14,951.50 was deposited with the clerk of the district court, and is still in the possession of said clerk and subject to the control of the said District Court, and that if said sum be paid to said Caroline Thomson, pursuant to the mandate of the Circuit Court of Appeals, then, according to the information and belief of petitioner, said fund will be dissipated and can never again be subjected to the jurisdiction or disposition of the District Court.

That the United States Circuit Court of Appeals for the Eighth Circuit has formulated its Rule 16, subdivision (c) of which follows:

"(c) Effect of Petition for Certiorari. If a stay of mandate be granted pending application to the Supreme Court for certiorari, such stay shall not exceed 30 days; Provided, that if, within such stay, there is

filed with the clerk of this court the certificate of the clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, such stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of that Court denying the writ, the mandate shall issue forthwith."

That said rule conflicts with the statute allowing three months and that its enforcement herein by the Circuit Court of Appeals will deprive this Court of jurisdiction to review the record on certiorari.

That said Circuit Court of Appeals, believing that it was its duty to give effect to said rule, notwithstanding the conflict between same and the Act of Congress as applied to the facts herein, denied petitioner's last motion for an extension of the stay of mandate.

That petitioner will need the full time authorized by the statute so as to enable him to have the petition for certiorari and supporting brief properly prepared, printed and filed.

Wherefore, Petitioner respectfully prays the Court that order issue to the said Circuit Court of Appeals that the mandate be stayed until it is notified by the clerk of this court that a petition for certiorari is on file in this court, or until the expiration of the time fixed by statute for presenting said petition to this Court, and that a copy of said order be transmitted to the Clerk of the United States Circuit Court of Appeals at St. Louis, Missouri, and another copy to the Clerk of the United States District Court at Kansas City, Missouri.

Harvey E. Harty
Marion J. O'Donnell
 Attorneys for Petitioner.

State of Missouri, County of Jackson, ss.

Harvey E. Hartz, being duly sworn, upon his oath states: That he is the attorney of record for Freeman J. Thomson, administrator of the estate of Arthur J. Thomson, deceased, in the cause mentioned in the above and foregoing motion.

That he knows of the matters and things therein stated, and that the statements made in said motion are true.

Harvey E. Hartz

Subscribed in my presence and sworn to before me
this 3/11 day of October, 1946.

Thos. M. Pratt,

(Seal)

Notary Public, Jackson
County, Missouri.